

**JUDGE CROTTY****07 CV 3710**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CARMEN VIRUET

Plaintiff

v.

UNITED STATES OF AMERICA

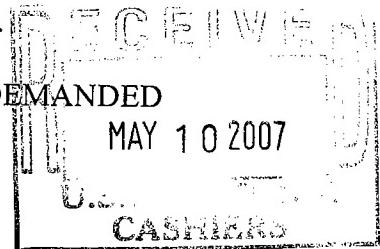
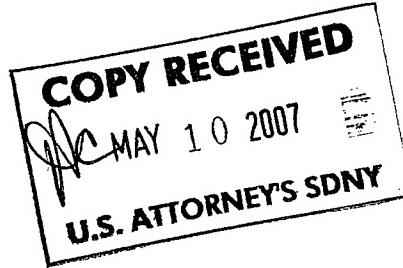
Defendant

Civil Action No. **07-CV-3710**

JURY TRIAL DEMANDED

MAY 10 2007

CASHIER



Plaintiff, CARMEN VIRUET by her undersigned attorney sues the Defendant, THE UNITED STATES OF AMERICA in this action and alleges as follows:

1. Plaintiff, Carmen Viruet is a citizen of the United States who resides at 70 E 108<sup>th</sup> Street, New York, New York 10029.
2. The Defendant is the United States of America.
3. This suit is arising under the laws of the Internal Revenue Code for the refund of income taxes that were to be refunded to the Plaintiff, but were improperly withheld by the Internal Revenue Service.
4. Jurisdiction is conferred upon the Court by 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422.
5. Venue is appropriate under 28 U.S.C. § 1391(e).
6. On or about February 10, 2005, the Plaintiff, Carmen Viruet, filed a timely federal income tax return (Form 1040) for the calendar year 2004 online with the

Regional Service Center in Andover, Massachusetts. This return reported a refund amount of \$5,858.00. Please see "Exhibit A."

7. Plaintiff filed a Form 1040 tax return through Union Settlement Federal Credit Union, a free tax preparation service located at 237 E. 104<sup>th</sup> Street, New York, NY.

8. Plaintiff claimed a refund of \$5,858.00 for her withholding in the amount of \$1,294, her earned income tax credit in the amount of \$3,503, and her additional child tax credit in the amount of \$1,061. Please see "Exhibit A."

9. No refund check was sent to Plaintiff, nor was any amount deposited into her Citibank account, account number 49679974 and routing number 02100089.

10. Plaintiff contacted the Internal Revenue Service on numerous occasions to inquire about the status of her refund. One such inquiry was made on April 28, 2005. Please see "Exhibit B."

11. On May 25, 2005 Plaintiff made another inquiry to the IRS about the status of her refund. The IRS responded by sending Form 3911. The IRS filled out the majority of the Form 3911.

12. Plaintiff completed Form 3911 by filling in any blank spaces. She then signed and returned the form to the IRS on or about May 31, 2005. Please see "Exhibit C."

13. On Form 3911, the IRS indicated that they had directly deposited \$5,858.00 into an account numbered 49679982 with routing number 021001088 on March 7, 2005. This was not the correct routing number for the Plaintiff's bank account.

14. The IRS responded to Plaintiff in a letter dated June 13, 2005 which stated that her refund was directly deposited into account 49679982 at HSBC on February 25, 2005. Please see "Exhibit B."

15. In her continued attempt to recover her refund, on July 20, 2005 Plaintiff contacted the IRS Office of the Taxpayer Advocate to inquire about the status of her refund and the Form 3911 she had submitted.

16. In a letter dated July 22, 2005, Kate Wilshusen, Case Advocate for the IRS Taxpayer Advocate Service responded to Plaintiff's July 20, 2005 inquiry. Ms. Wilshusen stated that Plaintiff's overpayment was direct deposited to the account as electronically transmitted. The letter further stated that there was nothing the Office of the Taxpayer Advocate or the IRS could do "if the funds were deposited into another person's account because the account number entered for your tax return direct deposit was incorrect." Please see "Exhibit D."

17. After receiving Ms. Wilshusen's response, Ms. Viruet contacted a representative of HSBC. HSBC Sr. Consumer Banker Frank Cobena addressed a letter to Kate Wilshusen dated July 29, 2005 stating that HSBC had not received Carmen Viruet's tax refund in the amount of \$5,858.00 and that account number 49679982 is not a valid account number at HSBC. Please see "Exhibit E."

18. The IRS claims it deposited the money into account number 49679982 at HSBC. Please see "Exhibit B."

19. On or about August 5, 2005 the Plaintiff faxed HSBC's letter to Ms. Wilshusen.

WHEREFORE, Plaintiff prays for judgment against the Defendant in the amount of \$5,858.00 plus interest from the date the refund was due, or such greater amount as she may be entitled to, together with costs and interest as allowed by the law, and for such other further relief as the Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all issues raised by the Complaint.

May 10, 2007

Lincoln Square Legal Services, Inc.  
33 West 60<sup>th</sup> Street, 3<sup>rd</sup> Fl.  
New York, N.Y. 10023  
(212) 636-7353  
Attorney for Plaintiff

By:

  
Elizabeth Maresca  
Bar ID # EM4799

# EXHIBIT

# A

Form 1040

Department of the Treasury—Internal Revenue Service  
U.S. Individual Income Tax Return 2004

(99) IRS Use Only—Do not write or staple in this space.

**Label**

(See instructions on page 16.)

**Use the IRS label:**

Otherwise, please print or type.

**Presidential****Election Campaign**  
(See page 16.)

For the year Jan. 1-Dec. 31, 2004, or other tax year beginning		, 2004, ending	, 20	OMB No. 1545-0074
Your first name and initial		Last name		Your social security number
<b>CARMEN L VIRUET</b>		<b>VIRU</b>		080 54 6687
If a joint return, spouse's first name and initial		Last name		Spouse's social security number
Home address (number and street). If you have a P.O. box, see page 16.		Apt. no.		
<b>70 EAST 108TH ST APT 5F</b>				
City, town or post office, state, and ZIP code. If you have a foreign address, see page 16.				
<b>NEW YORK NY 100293826</b>				

**Important!**

You must enter your SSN(s) above.

**Filing Status**

Check only one box.

Note. Checking "Yes" will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ►	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
1 <input type="checkbox"/> Single	4 <input checked="" type="checkbox"/> Head of household (with qualifying person). (See page 17.) If the qualifying person is a child but not your dependent, enter this child's name here. ►			
2 <input type="checkbox"/> Married filing jointly (even if only one had income)	5 <input type="checkbox"/> Qualifying widow(er) with dependent child (see page 17)			
3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above and full name here. ►	Boxes checked on 6a and 6b      1 No. of children on 6c who: • lived with you      3 • did not live with you due to divorce or separation (see page 18) Dependents on 6c not entered above			

**Exemptions**

If more than four dependents, see page 18.

6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a	6b <input type="checkbox"/> Spouse			
c Dependents:	(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you
JERELYN K TORRES	TORR	109 82 3031	DAUGHTER	<input checked="" type="checkbox"/>
DUSTIN A DURAN	DURA	076 80 5967	SON	<input checked="" type="checkbox"/>
JUSTINE Z DURAN	DURA	070 78 3628	DAUGHTER	<input checked="" type="checkbox"/>
d Total number of exemptions claimed				

Add numbers on lines above ► 4

**Income**

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 19.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	17,825.00
8a Taxable interest. Attach Schedule B if required	8a	
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	
b Qualified dividends (see page 20)	9b	
10 Taxable refunds, credits, or offsets of state and local income taxes (see page 20)	10	
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ► <input type="checkbox"/>	13	
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	b Taxable amount (see page 22)
16a Pensions and annuities	16a	b Taxable amount (see page 22)
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18 Farm income or (loss). Attach Schedule F	18	
19 Unemployment compensation	19	
20a Social security benefits	20a	b Taxable amount (see page 24)
21 Other income. List type and amount (see page 24)	21	
22 Add the amounts in the far right column for lines 7 through 21. This is your total income ►	22	17,825.00

**Adjusted Gross Income**

23 Educator expenses (see page 26)	23	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25 IRA deduction (see page 26)	25	
26 Student loan interest deduction (see page 28)	26	
27 Tuition and fees deduction (see page 29)	27	
28 Health savings account deduction. Attach Form 8889	28	
29 Moving expenses. Attach Form 3903	29	
30 One-half of self-employment tax. Attach Schedule SE	30	
31 Self-employed health insurance deduction (see page 30)	31	
32 Self-employed SEP, SIMPLE, and qualified plans	32	
33 Penalty on early withdrawal of savings	33	
34a Alimony paid b Recipient's SSN ►	34a	
35 Add lines 23 through 34a	35	
36 Subtract line 35 from line 22. This is your adjusted gross income ►	36	17,825.00

Form 1040 (2004)

Page 2

**Tax and Credits****Standard Deduction for—**

- People who checked any box on line 38a or 38b or who can be claimed as a dependent, see page 31.

- All others:

Single or  
Married filing  
separately,  
\$4,850

Married filing  
jointly or  
Qualifying  
widow(er),  
\$9,700

Head of  
household,  
\$7,150

37	Amount from line 36 (adjusted gross income) . . . . .	37	17,825 00
38a	Check <input type="checkbox"/> You were born before January 2, 1940, <input type="checkbox"/> Blind. Total boxes checked ► 38a		
if: <input type="checkbox"/> Spouse was born before January 2, 1940, <input type="checkbox"/> Blind.			
b If your spouse itemizes on a separate return or you were a dual-status alien, see page 31 and check here ► 38b			
39 Itemized deductions (from Schedule A) or your standard deduction (see left margin) . . . . .	39	7,150 00	
40 Subtract line 39 from line 37 . . . . .	40	10,675 00	
41 If line 37 is \$107,025 or less, multiply \$3,100 by the total number of exemptions claimed on line 6d. If line 37 is over \$107,025, see the worksheet on page 33 . . . . .	41	12,400 00	
42 Taxable income. Subtract line 41 from line 40. If line 41 is more than line 40, enter -0- . . . . .	42		
43 Tax (see page 33). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 . . . . .	43		
44 Alternative minimum tax (see page 35). Attach Form 6251 . . . . .	44		
45 Add lines 43 and 44 . . . . .	45		
46 Foreign tax credit. Attach Form 1116 if required . . . . .	46		
47 Credit for child and dependent care expenses. Attach Form 2441 . . . . .	47		
48 Credit for the elderly or the disabled. Attach Schedule R . . . . .	48		
49 Education credits. Attach Form 8863 . . . . .	49		
50 Retirement savings contributions credit. Attach Form 8880 . . . . .	50		
51 Child tax credit (see page 37) . . . . .	51		
52 Adoption credit. Attach Form 8839 . . . . .	52		
53 Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8859 . . . . .	53		
54 Other credits. Check applicable box(es): a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Specify . . . . .	54		
55 Add lines 46 through 54. These are your total credits . . . . .	55		
56 Subtract line 55 from line 45. If line 55 is more than line 45, enter -0- . . . . .	56		

**Other Taxes**

57 Self-employment tax. Attach Schedule SE . . . . .
58 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 . . . . .
59 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required . . . . .
60 Advance earned income credit payments from Form(s) W-2 . . . . .
61 Household employment taxes. Attach Schedule H . . . . .
62 Add lines 56 through 61. This is your total tax . . . . .

**Payments**

63 Federal income tax withheld from Forms W-2 and 1099 . . . . .	63	1,294 00
64 2004 estimated tax payments and amount applied from 2003 return . . . . .	64	
65a Earned income credit (EIC) . . . . .	65a	3,503 00
b Nontaxable combat pay election ► 65b . . . . .		
66 Excess social security and tier 1 RRTA tax withheld (see page 54) . . . . .	66	
67 Additional child tax credit. Attach Form 8812 . . . . .	67	1,061 00
68 Amount paid with request for extension to file (see page 54) . . . . .	68	
69 Other payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 c <input type="checkbox"/> Form 8885 . . . . .	69	
70 Add lines 63, 64, 65a, and 66 through 69. These are your total payments . . . . .	70	5,858 00 X

**Refund**

Direct deposit?

See page 54  
and fill in 72b,  
72c, and 72d.

71 If line 70 is more than line 62, subtract line 62 from line 70. This is the amount you overpaid . . . . .
72a Amount of line 71 you want refunded to you . . . . .
b Routing number 0 2 1 0 0 1 0 8 8 ► c Type: <input type="checkbox"/> Checking <input checked="" type="checkbox"/> Savings
d Account number 4 9 6 7 9 9 8 2 . . . . .
73 Amount of line 71 you want applied to your 2005 estimated tax ► 73 . . . . .

71	5,858 00
72a	5,858 00
73	
74	

**Amount You Owe**

74 Amount you owe. Subtract line 70 from line 62. For details on how to pay, see page 55 ►
75 Estimated tax penalty (see page 55) . . . . .


**Third Party Designee**

Do you want to allow another person to discuss this return with the IRS (see page 56)?  Yes. Complete the following.  No

Designee's name ► Phone no. ► ( ) Personal identification number (PIN) ► ( )

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation	Daytime phone number
		CLERICAL ASSOCIATE	(212) 8607940

Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	
--	------	---------------------	--

**Paid Preparer's Use Only**

Preparer's signature ►	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
			S1501376

Firm's name (or yours if self-employed), address, and ZIP code ►	EIN	Phone no. ( ) N
--	-----	-----------------

a Control number	22222	Void <input type="checkbox"/>	For Official Use Only ►			
OMB No. 1545-0008						
<b>b Employer identification number</b> <u>13-6400434</u>			1 Wages, tips, other compensation  <b>13,226.00</b>	2 Federal income tax withheld  <b>1,175.00</b>		
<b>c Employer's name, address, and ZIP code</b> <b>THEC</b> <b>THE CITY OF NEW YORK</b>  <b>CITY OF NEW YORK</b>  <b>NEW YORK NY 10007</b>			3 Social security wages  <b>13,423.00</b>	4 Social security tax withheld  <b>832.00</b>		
			5 Medicare wages and tips  <b>13,423.00</b>	6 Medicare tax withheld  <b>195.00</b>		
			7 Social security tips	8 Allocated tips		
<b>d Employee's social security number</b> <u>080-54-6687</u>			9 Advance EIC payment	10 Dependent care benefits		
<b>e Employee's first name and initial</b> <u>CARMEN L VIRUET</u>		Last name	11 Nonqualified plans	12a See instructions for box 12		
			13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>	12b		
			14 Other IRC414H  IRC125	12c  12d		
<b>f Employee's address and ZIP code</b>  <b>70 EAST 108TH ST</b>  <b>NEW YORK NY 100293826</b>			197  104			
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
NY	<u>13-6400434</u>	<u>13,226</u>	<u>444</u>	<u>13,226</u>	<u>285</u>	<u>NYC</u>

**Form W-2 Wage and Tax Statement**

**Copy A For Social Security Administration** — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

2004

Department of the Treasury—Internal Revenue Service

**For Privacy Act and Paperwork Reduction  
Act Notice, see back of Copy D.**

**Do Not Cut, Fold, or Staple Forms on This Page — Do Not Cut, Fold, or Staple Forms on This Page**

## W2 Indicators

a Control number	22222	Void <input type="checkbox"/>	For Official Use Only ► OMB No. 1545-0008					
b Employer identification number <b>13-2687297</b>			1 Wages, tips, other compensation <b>4,599.00</b>		2 Federal income tax withheld <b>119.00</b>			
c Employer's name, address, and ZIP code  <b>OUR LADY QUEEN OF ANGELS PAROCHIAL</b>  <b>232 EAST 113TH STREET</b>  <b>NEW YORK NY 10029</b>			3 Social security wages <b>4,599.00</b>		4 Social security tax withheld <b>285.00</b>			
			5 Medicare wages and tips <b>4,599.00</b>		6 Medicare tax withheld <b>67.00</b>			
			7 Social security tips		8 Allocated tips			
d Employee's social security number <b>080-54-6687</b>			9 Advance EIC payment		10 Dependent care benefits			
e Employee's first name and initial <b>CARMEN L. VIRUET</b>	Last name		11 Nonqualified plans		12a See instructions for box 12			
e Employee's first name and initial  <b>CARMEN L. VIRUET</b>  <b>70 EAST 108TH ST APT 5F</b>  <b>NEW YORK NY 100293826</b>			13 Statutory employee <input type="checkbox"/>	Retirement plan <input type="checkbox"/>	Third-party sick pay <input type="checkbox"/>	12b		
			14 Other NYS DI		14	12c		
						12d		
f Employee's address and ZIP code								
15 State Employer's state ID number <b>NY 132687297</b>	16 State wages, tips, etc. <b>4,599</b>	17 State income tax <b>29</b>	18 Local wages, tips, etc. <b>4,599</b>	19 Local income tax <b>29</b>	20 Locality name <b>NYC</b>			

Form **W-2** Wage and Tax Statement

2004

Department of the Treasury—Internal Revenue Service  
 For Privacy Act and Paperwork Reduction  
 Act Notice, see back of Copy D.

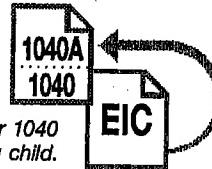
Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Cat. No. 10134D

**Do Not Cut, Fold, or Staple Forms on This Page — Do Not Cut, Fold, or Staple Forms on This Page**

W2 Indicator S

COPY

**SCHEDULE EIC**  
(Form 1040A or 1040)Department of the Treasury  
Internal Revenue Service**Earned Income Credit****Qualifying Child Information**Complete and attach to Form 1040A or 1040  
only if you have a qualifying child.

OMB No. 1545-0074

**2004**Attachment  
Sequence No. 43

Name(s) shown on return

Your social security number

**Before you begin:** See the instructions for Form 1040A, lines 41a and 41b, or Form 1040, lines 65a and 65b, to make sure that (a) you can take the EIC and (b) you have a qualifying child.

- If you take the EIC even though you are not eligible, you may not be allowed to take the credit for up to 10 years. See back of schedule for details.
- It will take us longer to process your return and issue your refund if you do not fill in all lines that apply for each qualifying child.
- Be sure the child's name on line 1 and social security number (SSN) on line 2 agree with the child's social security card. Otherwise, at the time we process your return, we may reduce or disallow your EIC. If the name or SSN on the child's social security card is not correct, call the Social Security Administration at 1-800-772-1213.

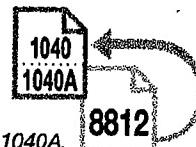
**Qualifying Child Information****Child 1****Child 2**

1 Child's name	First name <b>TORR</b> JERELYN K	Last name <b>TORRES</b>	First name <b>DURA</b> DUSTIN A	Last name <b>DURAN</b>
2 Child's SSN	109   82   3031		076   80   5967	
3 Child's year of birth	Year <b>1</b> <b>9</b> <b>9</b> <b>4</b> <i>If born after 1985, skip lines 4a and 4b; go to line 5.</i>		Year <b>1</b> <b>9</b> <b>9</b> <b>2</b> <i>If born after 1985, skip lines 4a and 4b; go to line 5.</i>	
4 If the child was born before 1986— a Was the child under age 24 at the end of 2004 and a student?	<input type="checkbox"/> Yes. <input type="checkbox"/> No. <i>Go to line 5.</i> <input type="checkbox"/> Yes. <input type="checkbox"/> No. <i>Go to line 5.</i>		<input type="checkbox"/> Yes. <input type="checkbox"/> No. <i>Continue</i> <input type="checkbox"/> Yes. <input type="checkbox"/> No. <i>Continue</i>	
b Was the child permanently and totally disabled during any part of 2004?	<input type="checkbox"/> Yes. <input type="checkbox"/> No. <i>Continue</i> The child is not a qualifying child.		<input type="checkbox"/> Yes. <input type="checkbox"/> No. <i>Continue</i> The child is not a qualifying child.	
5 Child's relationship to you (for example, son, daughter, grandchild, niece, nephew, foster child, etc.)	DAUGHTER		SON	
6 Number of months child lived with you in the United States during 2004	12 months <i>Do not enter more than 12 months.</i>		12 months <i>Do not enter more than 12 months.</i>	



You may also be able to take the additional child tax credit if your child (a) was under age 17 at the end of 2004, (b) is claimed as your dependent on line 6c of Form 1040A or Form 1040, and (c) is a U.S. citizen or resident alien. For more details, see the instructions for line 42 of Form 1040A or line 67 of Form 1040.

Form 8812

**"REPORT PRINT DO NOT PROCESS."****Additional Child Tax Credit**Department of the Treasury  
Internal Revenue Service (99)

Complete and attach to Form 1040 or Form 1040A.

OMB No. 1545-1620

**2004**Attachment  
Sequence No. 47

Name(s) shown on return

Your social security number

**Part I All Filers**

- 1 Enter the amount from line 1 of your Child Tax Credit Worksheet on page 38 of the Form 1040 instructions or page 37 of the Form 1040A instructions. If you used Pub. 972, enter the amount from line 8 of the worksheet on page 4 of the publication . . . . .
- 2 Enter the amount from Form 1040, line 51, or Form 1040A, line 33 . . . . .
- 3 Subtract line 2 from line 1. If zero, stop; you cannot take this credit . . . . .
- 4a Enter your total earned income. See the instructions on back . . . . .
- b Nontaxable combat pay included on line 4a . . . . .
- 4a      17,825 00
- 5 Is the amount on line 4a more than \$10,750?
- No. Leave line 5 blank and enter -0- on line 6.
- Yes. Subtract \$10,750 from the amount on line 4a. Enter the result . . . . .
- 5      7,075 00
- 6 Multiply the amount on line 5 by 15% (.15) and enter the result . . . . .  
Next. Do you have three or more qualifying children?
- No. If line 6 is zero, stop; you cannot take this credit. Otherwise, skip Part II and enter the smaller of line 3 or line 6 on line 13.
- Yes. If line 6 is equal to or more than line 3, skip Part II and enter the amount from line 3 on line 13. Otherwise, go to line 7.
- 6      1,061 00

**Part II Certain Filers Who Have Three or More Qualifying Children**

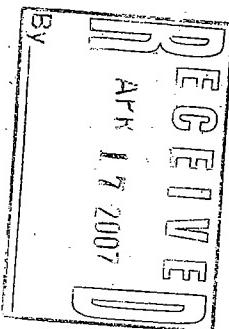
- 7 Enter the total of the withheld social security and Medicare taxes from Form(s) W-2, boxes 4 and 6. If married filing jointly, include your spouse's amounts with yours. If you worked for a railroad, see the instructions on back . . . . .
- 7      1,379 00
- 8 **1040 filers:** Enter the total of the amounts from Form 1040, lines 30 and 58, plus any uncollected social security and Medicare or tier 1 RRTA taxes included on line 62.  
**1040A filers:** Enter -0-. }  
8  
9      1,379 00
- 9 Add lines 7 and 8 . . . . .
- 10 **1040 filers:** Enter the total of the amounts from Form 1040, lines 65a and 66.  
**1040A filers:** Enter the total of the amount from Form 1040A, line 41a, plus any excess social security and tier 1 RRTA taxes withheld that you entered to the left of line 43 (see the instructions on back). }  
10      3,503 00
- 11 Subtract line 10 from line 9. If zero or less, enter -0- . . . . .
- 12 Enter the larger of line 6 or line 11 here . . . . .  
Next, enter the smaller of line 3 or line 12 on line 13.
- 11  
12      1,061 00

**Part III Your Additional Child Tax Credit**

- 13 This is your additional child tax credit . . . . .
- 13      1,061 00

Enter this amount on  
Form 1040, line 67, or  
Form 1040A, line 42.

Incumbent Square Legal Services, Inc.  
Attn: Elizabeth M. Becca  
33 West 36th Street, 3rd Fl  
New York, New York 10023



# EXHIBIT

# B

AUSTIN TX 73301-0025

In reply refer to: 0636106390  
June 13, 2005 LTR 129C  
080-54-6687 200412 30 000

07645

BODC: WI

CARMEN L VIRUET  
70 E 108TH ST APT 5F  
NEW YORK NY 10029-3826568



003323

Taxpayer Identification Number: 080-54-6687  
Tax Period: Dec. 31, 2004  
Form: 1040

Dear Taxpayer:

Thank you for the inquiry dated Apr. 28, 2005.

Our records indicate that on Feb. 25, 2005, your refund of \$5,858.00, was deposited directly into account number 49679982 at HSBC Bank USA, N.A., as requested. If you have questions about this refund, please contact your financial institution.

Please contact their ACH Department at: 800-368-7808, to verify this transaction.

If you have any questions, please call us toll free at 1-800-829-0922.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number \_\_\_\_\_ Hours \_\_\_\_\_

# EXHIBIT C

**Form 3911**  
(Rev. January 2005)

Department of the Treasury — Internal Revenue Service  
**Taxpayer Statement Regarding Refund**

OMB NO. 1545-1384

The box checked below is in reply to your inquiry on 05/25/2005 about your Federal tax return for 200412

We sent you a refund for \$ 5,858.00 on 03/07/2005.  Check  Direct Deposit

The U.S. Postal Service returned your check because they could not deliver it.

Your check was not cashed within one year of the issue date as the law requires and it can no longer be cashed.

► If we checked one of the above boxes, please complete Sections I and III of this form and send it back to us in the enclosed envelope or facsimile form to \_\_\_\_\_ We will send you a new check within six weeks of the date we receive this form.

If you did not receive the refund check, or if you received it and it was lost, stolen or destroyed, please complete Sections I, II and III. Send this form back to us in the enclosed envelope or facsimile form to \_\_\_\_\_

► If you don't hear from us by six weeks from the date you send the form back to us, please contact us at \_\_\_\_\_ If you prefer, you may write to us at the service center where you filed your return.

**Section I** Print your current name(s), taxpayer identification number (for individuals, this is your social security number; for businesses, it is your employer identification number) and address, including ZIP code. If you filed a joint return, show the names of both husband and wife on lines 1 and 2 below.

1. Your name <b>CARMEN L VIRUEL</b>	Taxpayer Identification Number <b>080-54-6687</b>			
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2. Spouse's name (if a name is entered here, spouse must sign on line 14).	Taxpayer Identification Number			
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3. Street <b>70 E 108TH ST</b>	Apt. No. <b>APT 5F</b>	City <b>NEW YORK</b>	State <b>NY</b>	Zip code <b>10029-3826</b>
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► Please give us a phone number where you can be reached between 8 a.m. and 4 p.m. Include area code.	► Area code <b>212</b>	Number <b>860-7940</b>
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► If any of the above has changed since you filed your tax return, please enter the information below exactly as shown on your return.

Street <b>Carmen L. Viruel</b>	Apt. No.	City	State	Zip code
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► If you have filed a power of attorney authorizing a representative to receive your refund check, please enter his or her name and mailing address below.

5. Name of representative	6. Address (include ZIP code)
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7. Type of return: <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business, Form _____ <input type="checkbox"/> Other _____	Tax period: <b>200412</b>
Type of refund requested: <input type="checkbox"/> Check <input checked="" type="checkbox"/> Direct Deposit Amount: \$ <b>5,858.00</b>	Date filed <b>04/15/2005</b>

**Refund Information**  
(Please check all boxes that apply to you.)

8.  I didn't receive a refund.  I received a refund check, but it was lost, stolen or destroyed.

9.  I received the refund check and signed it.

**NOTE:** The law doesn't allow us to issue a replacement check if you endorsed it and someone other than you cashed the check, since that person didn't forge your signature.

10.  I have received correspondence about the tax return. (Please attach a copy if possible.)

**(Please give us the following information if possible.)**

11.  Name of bank and account number where you normally cash or deposit your checks:

Bank: **CITY BANK OF NEW YORK** Account number: **49679982 ROUTING 021000089**

12. a. If the refund was a direct deposit, did you receive a "Refund Anticipation Loan"?  YES  NO

b. Enter the Routing Transit Number (RTN) **021001068** and account number **49679982** shown on your return.

**Section III****Certification**

► Please sign below, exactly as you signed the return. If this refund was from a joint return, we need the signatures of both husband and wife before we can trace it.

Under penalties of perjury, I declare that I have examined this form, and to the best of my knowledge and belief, the information is true, correct, and complete. I request that you send a replacement refund, and if I receive two refunds I will return one.

13. Signature (For business returns, signature of person authorized to sign the check)

Date:

*Caron L. Vincent*

5-31-05

14. Spouse's signature, if required (For businesses, enter the title of the person who signed above.)

Date:

**Section IV****Description of Check**  
(For Internal Revenue Service use only)

Schedule number	Refund Date	Amount	Other (DLN, Check/Symbol, etc.)

**Paperwork Reduction Act Notice** — We ask for the information on this form to carry out the Internal Revenue laws of the United States. You aren't required to give us the information since the refund you claimed has already been issued. However, without the information we won't be able to trace your refund, and may be unable to replace it. You may give us the information we need in a letter.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is less than 5 minutes.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, Attention: Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

DO NOT send this form to this office. Instead, use the envelope provided, or mail it to the Internal Revenue Service center where you filed your tax return.

# EXHIBIT D



The Office of the Taxpayer Advocate operates independently of any other IRS Office and reports directly to Congress through the National Taxpayer Advocate.

July 22, 2005

Carmen L Viruet  
70 East 108<sup>th</sup> Street Apt 5f  
New York, NY 10029-3826 568

Taxpayer Identification Number: 080-54-6687  
Tax Form(s): 1040  
Tax Period(s) Ending: December 31, 2004  
Case Number: 3449627

Dear Ms. Viruet:

This is in response to your inquiry July 20, 2005, received in our office on July 21, 2005. I understand you're concerned about the non-receipt of your expected refund from the tax account listed above. I also understand that you have resubmitted Form 3911 in June to the IRS without receiving any response.

Your account indicates that your overpayment was direct deposited to the account number as electronically transmitted. The IRS issued you a letter numbered 129C in June 2005. I will need a complete copy of that letter faxed to me before August 16, 2005. Please include copy of this letter with your fax.

I will also need for you to contact the financial institution. If the funds were deposited into another person's account because the account number entered for your tax return direct deposit was incorrect, there will be nothing that our office or the IRS can do to assist you in this matter. You will have to work with the financial institution to obtain the funds.

I'll notify you by August 23, 2005, with an update on your inquiry and hopefully I will have your account inquiry fully addressed before September 16, 2005. In the meantime, I would like to stay in touch with you while I work to resolve your inquiry. Please advise me of any change in your address or telephone number. Also, let me know if another office within the IRS contacts you concerning this matter.

If you have any questions, you can reach me at the telephone numbers and hours of operation listed below. If you prefer, you can write to me at the address or fax me below. Please provide a telephone number where you can be reached and the best time to call you.

I apologize that you may have not been given correct information about what your options are when returns are electronically transmitted with incorrect direct deposit account number when there has been no error by IRS. Thank you for your patience and cooperation.

Sincerely,

*Kate D Wilshusen*  
Kate D Wilshusen  
Case Advocate

# EXHIBIT

# E



July 29, 2005

Dear Kate D. Wilshusen:

This letter is to confirm that HSBC Bank USA, N.A. has not received Ms. Carmen L. Viruet's tax refund in the amount of \$5,858.00 as previously thought. I have confirmed this with our ACH Dept. that account #49679982 is not a valid account number at our bank. Any further questions can be directed to our ACH Dept. at (800) 368-7808. Thank you for your attention in this matter.

Sincerley,

A handwritten signature in black ink, appearing to read "Frank Cobena".

Frank Cobena  
Sr. Consumer Banker

# Fax

To: MS. Kate Wilshusen From: Ms. Carmen Viruet 344 344  
Fax: 866-778-9167 Pages: 6 8627

Phone: 866-895-2876 Date: 8-5-05

Re: Lost Income tax check + cc: File  
HSBC Bank.

Urgent  For Review  Please Comment  Please Reply  Please Recycle

TAX PAYERS ADVOCATE 344 9627

# EXHIBIT

# F



The Office of the Taxpayer Advocate operates independently of any other IRS Office and reports directly to Congress through the National Taxpayer Advocate.

March 21, 2007

Carmen Viruet  
70 E 108<sup>th</sup> St Apt 5F  
New York, NY 10029

Taxpayer Identification Number: 080-54-6687  
Tax Form(s): 1040 Series  
Tax Period(s) Ending: December 31, 2004  
Case Number: 3864960

Dear Ms. Viruet:

This is in response to an inquiry dated March 14, 2007, from Daniel Saketkhou, your authorized power of attorney and received in our office on the same date. I understand you're concerned about the direct deposit of your 2004 refund to the incorrect financial institution. Based on the information from your tax return the Internal Revenue Service (IRS) did deposit it and those funds were never returned to IRS to release to you. We have been requested to retrieve those funds from Household Bank and refund directly to you and if no refund will be issued then a letter stating this fact.

Because the routing transit number or account number on your return was incorrect, you must contact the financial institution to resolve the erroneous deposit. The IRS does not have authority to demand the return of the refund from the designated financial institution because the refund deposit went into the account listed on your tax return.

Since your prior case was closed in August 2005 there has been several other agencies designated for you to contact directly for assistance:

1. The Office of the Comptroller of the Currency (OCC) is an agency of the U.S. Department of the Treasury. The OCC states that it is best if a person tries to resolve a complaint directly with their bank before going to an outside agency. However, if the resolution seems impossible, you may file a formal complaint with the OCC. The OCC Customer Assistance Group may answer questions, offer guidance, and assist consumers in resolving complaints about National Banks.
2. You may reach the OCC customer assistance specialists in any of the following manners:
  - o Telephone Number 1-800-613-6743 (business days 9:00 a.m. to 3:30 p.m. Central Time); Only English speaking assistance is available.
  - o Emailing to: [Customer.Assistance@occ.treas.gov](mailto:Customer.Assistance@occ.treas.gov).
  - o Faxing to: 1-713-336-4601.
  - o Mailing to: Customer Assistance Group, 1301 McKinley Street, Suite 3710, Houston, TX 77010.

3. There are no special forms needed to file a complaint. You need to provide your:
  - o Name
  - o Address
  - o Daytime Telephone Number
4. The following are additional agencies to which you may appeal:
  - o The Office of Thrift Supervision: (This organization regulates federal savings and loans, and federally chartered banks). Email Address [consumer@ots.treas.gov](mailto:consumer@ots.treas.gov)
  - o The Federal Deposit Insurance Corporation: (This organization regulates federal insured state banks that are not members of the Federal Reserve System). Email Address [consumer@fdic.gov](mailto:consumer@fdic.gov)
  - o The National Credit Union Administration (Regulates federal credit unions). Web address and phone number  
[http://www.ncua.gov/AboutNcua/ncua\\_directory.html](http://www.ncua.gov/AboutNcua/ncua_directory.html)

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I'm closing your inquiry in the Taxpayer Advocate Service. If you have any questions regarding this letter or the contents, please contact me at the telephone numbers and during the hours of operation listed below. If you prefer, you can write to me at the address or faxes below. Please provide a telephone number where you can be reached and the best time to call you.

I'm sorry for any inconvenience this situation has caused you. Thank you for your patience and cooperation.

Sincerely,



Kate D Wilshusen  
Case Advocate

CC: Daniel Saketkhou

# EXHIBIT G

I Daniel Saketkhou hereby affirm the following:

1. I am a third year law student at Fordham Law School and my anticipated graduation date is May 20, 2007.
2. During the Spring semester of 2007 I was enrolled in the tax clinic and worked as a legal intern at Lincoln Square Legal Services.
3. In February of 2007 Carmen Viruet contacted Lincoln Square Legal Services to see if we could assist her in retrieving her 2004 refund from the IRS. I was assigned to her case along with my partner Jaclyn Obeso.
4. After we met with Ms. Viruet and had all of the proper forms and Powers of Attorney signed and submitted, I started to work on her case.
5. On or about March 14, 2007 I called the IRS Taxpayer Advocate to inquire about the status of Ms Viruet's refund.
6. In a letter dated March 21, 2007, the Taxpayer Advocate stated that the Plaintiff's case with the Office of the Taxpayer Advocate was closed.
7. After I received this letter I called the Taxpayer Advocate on numerous occasions until I was able to reach Kate Wilshusen, Ms. Viruet's contact at the Taxpayer Advocates office.
8. Ms. Wilshusen confirmed with me on the phone that Ms. Viruet's case was closed and that nothing could be done to reopen her case with the IRS.
9. When I inquired as to what had happened with Ms. Viruet's refund, Ms. Wilshusen told me that the funds were sent to HSBC.
10. Ms Wilshusen also stated that after Ms. Viruet contacted the IRS in 2005, the IRS told HSBC to send the funds back. Ms. Wilshusen stated that HSBC never sent the

funds back, and therefore, if Ms. Viruet wanted to retrieve them, she would have to retrieve them from HSBC.

11. I then contacted HSBC and spoke with both Arco and Sadit at HSBC taxpayer services on or about March 27, 2007. I was told that I needed to get a tracking number so that they could track where the funds went.

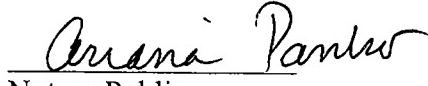
12. On or about March 28, 2007, I called Ms. Wilshusen to see if she could give me the tracking number for the funds. She stated that there was no tracking number, but that the "electronic trace number" for Ms. Viruet's refund was 022511036170312760 .

13. I then called HSBC many times to inquire as to what happened to Ms Viruet's funds. Each representative who answered the phone for HSBC denied having any knowledge of what happened to the funds whatsoever. Each representative would either transfer me to a different department, or give me a different phone number to call. When I would get transferred to the other department, the HSBC employee in the new department would have a similar answer for me and transfer me again. None of the employees were able to use the electronic trace number provided by Ms. Wilshusen to trace the funds.



Daniel Saketkhou

Sworn to before me this  
09 day of May 2007



Ariana Panko  
 Notary Public

Ariana Panko  
 Notary Public  
 State of New York  
 Qualified in Bronx County  
 Commission Expires 10/30/2010  
 01PAG155076